to be made at the trial of these discrepancies; and in the appeal to this court the summing-up was criticised for failing to put them adequately before the jury. This sort of point is essentially one for the jury who heard the evidence, saw the witnesses, and had the benefit of counsel's final speeches as well as the summing-up. The trial judge drew attention to the existence of the discrepancies, while declining to recite them in detail; and at the very outset of his summing-up he reminded the jury that the mere fact that he did not mention a matter did not deprive it of importance. In our judgment, there is nothing in the point.

The appeal is dismissed.

Appeal dismissed.

CHIA CHENG HO & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) November 24, 1973]
[Penang — Criminal Appeal No. 62 of 1973]

Criminal Law and Procedure — Possession of forged currency notes — Certificate signed by Deputy Governor of Bank Negara — Authorization by Governor of Bank Negara not produced — Sufficient extrinsic evidence of forgery — Presumption — Evidence Act, 1950 (Act 56), s. 79 — Penal Code, s. 489C — Criminal Procedure Code (S.S. Cap. 21), s. 428.

In this case the appellants appealed against their conviction on a charge of being in possession of forged currency notes. At the trial a certificate of the Deputy Governor of the Bank Negara issued under section 428 of the Criminal Procedure Code was produced. It was stated in the certificate that the Deputy Governor was duly authorised by the Governor to sign the certificate but the authority was not produced.

Held, dismissing the appeal: (1) the proper time to raise any objection on the admissibility of the certificate of the Deputy Governor was at the time when the certificate was adduced in evidence. If on such objection is raise then the court will presume that the Deputy Governor possessed such authority;

(2) in any event there was sufficient evidence apart from the certificate to show that the notes were forged.

Cases referred to:-

(1) *Shum Wai Tong & Anor.* v. *Public Prosecutor* [1972] 1 M.L.J. 196.

(2) *Rex* v. *Wong Kiang Chin* [1938] M.L.J. 178.

(3) *In re Tan Ah Chuan & Anor.* [1954] M.L.J. 135.

(4) *Mohammad Hanifah* v. *Public Prosecutor* [1956] M.L.J. 83.

(5) *Chia Han Kiat* v. *Public Prosecutor* [1937] M.L.J. 261.

CRIMINAL APPEAL.

Yeap Ghim Guan for first appelent.

R. Rajasingam for the second appelent.

T. Selvanthiranathan (Deputy Public Prosecutor) for respondent.

Chang Min Tat J.: The appellants were convicted on a joint charge of having in their possession forged currency notes, an offence punishable under section 489C of the Penal Code. The charge read "possession of forged currency notes, to wit $15,000." Factually forged currency notes have no legal worth, compare the charge in *Shum Wai Tong & Anor.* v. *Public Prosecutor*,[1] but no one was mistaken that the charge concerned possession of 300 forgeries of Singapore $50 currency notes. The sentence was 4 years' imprisonment on each accused.

The first and main ground of appeal from the conviction was that there was no evidence or no sufficient evidence at the close of the case for the prosecution that the notes in question were forged, which would put the appellants to the defence or convict them. The attack was aimed at the certificate of the Deputy Governor of Bank Negara Malaysia issued under section 428 of the Criminal Procedure Code (S.S. Cap. 21). In the certificate, it was averred that he had been duly authorised by the Governor to sign such certificates and he certified that the 300 Singapore $50 notes were all forgeries.

The certificate was adduced by the investigating officer but the authority was not produced. The authority was required by law to be in writing and in the nature of things, would be a general authority until revoked and would not be limited to any one case.

There was absolutely no challenge at this stage of this evidence, but at the close of the case of the prosecution, it was strenuously suggested that the certificate was not admissible. Why the challenge was not made and whether it should not have been at the moment when it was sought to introduce the certificate into evidence must now be matters which I shall have to leave to learned defence counsel to decide.

Now section 428 as amended reads

"Where in any criminal proceeding it is necessary to decide whether a currency note is or is not forged a certificate signed by the Governor of the Central Bank or any officer specially authorised in writing by him that he is satisfied by personal examination that such note is or is not forged, shall be conclusive evidence that such note is or is not forged, as the case may be, and neither the Governor nor any such officer shall be cross-examined with regard to the contents of such certificates, unless the court otherwise orders."

For the appellants, both counsel relied on the judgment of McElwaine C.J. (Straits Settlements), in *Rex* v. *Wong Kiang Chin*[2] in which the learned Chief Justice said that:

"Section 428 of the Criminal Procedure Code must be strictly observed before a certificate under it can be admitted in evidence. The section is for obvious reasons a very drastic departure from the usual rules of evidence. The certificate under it is conclusive and cross-examination with regard to the certificate is not permitted save with the permission of the court."

They also contended that under section 428 it was not possible for them to give notice of any challenge to such a document as was possible under section 427 which is *in pari materia* with section 399 of the Criminal Procedure Code (F.M.S. Cap. 6) and on this analogy, proof must be forthcoming that the officer was one duly authorised in writing.

After consideration, I take the view however that this argument is with respect fallacious. While admittedly there was no provision for cross-examination on the contents of the document as in section 427, an application could be made for the court's discretion to allow cross-examination and the time for making this application could be before or during the trial. While, as was said by McElwaine C.J. it was "unlikely that a court would permit cross-examination to disclose secret markings or indicia which experts know to look for on genuine notes," the court would perhaps be more ready to allow challenge of the certifier's authority. If it was therefore desired to argue

against the admissibility of the certificate on the ground of want of authority, it seemed to me that the challenge should have been made at the latest when the certificate was adduced in evidence. At this stage, in a proper case, an adjournment could always be considered, for process to be taken to ascertain the authority of the certifier.

In passing, I would remark that perhaps all this could be avoided if the authorisation was gazetted.

There appears to me to be presumptive support for the view I have taken in section 79 of the Evidence Act. The section which was relied on by the learned president sessions court who tried this case reads

79(1). The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Malaysia who is duly authorised thereto:

Provided that the document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in the document.

If I may with respect adopt the phrase of Spenser-Wilkinson J. (as he then was) in *In re Tan Ah Chuan & Anor.*[3] in respect of another clear provision of the Evidence Ordinance, the words of section 79 are "too clear to admit any gloss on them." The court shall presume that the Deputy Governor who signed the certificate held when he signed it the official character which he claimed in the document: see also, *Mohamed Hanifah* v. *Public Prosecutor.*[4] It is, as all presumptions are, rebuttable but in the absence of any such evidence, remains the substantive evidence on which a court can act.

If I am wrong in my application of section 79 of the Evidence Act or in my construction of section 428 of the Criminal Procedure Code, there is in my reading of the notes of evidence, sufficient evidence apart from the certificate of forgery. The currency notes in this case lack the security thread which since its first appearance has been woven into the paper used to print the notes and which is about the most difficult thing to reproduce. Without this security thread, the notes could not be genuine.

Now this thread does not obviously belong to that class of "secret marks or indicia which experts know to look for on genuine notes" as in the case of *Rex* v. *Wong Kiang Chin, supra* and which it would clearly be against public policy to reveal. There is no secrecy about it. It is large enough to be seen by the naked eye. It is palpable. And it is sufficiently notorious for anyone accepting a currency note to look for it, in the same way as one looks for a water-mark, as a test for its authenticity.

Also, the case was tried by the president who sat as a judge of law as well as of facts. It was not a jury case, as in *Rex* v. *Wong Kiang Chin, supra* and therefore the reasons given by McElwaine C.J. for the rejection of the suggestion that the jury could judge for themselves that the notes were forged are not strictly applicable.

In such a case

"it is the duty of an appellate court to be in judge of fact as well as of law,"

per Terrell Ag. C.J. (Straits Settlements) in *Chia Han Kiat* v. *Public Prosecutor.*[5] This duty is applied, as in *Chia Han Kiat's* case to upsetting a judgment which on a review of all the evidence was clearly wrong and must be applied at the other end to a consideration whether all the admissible evidence adduced in a case established facts which would support a conviction. In this case the notes were so obviously forged that they must even without the certificate of the Deputy Governor be seen to be forgeries and once possession was proved and there was further proof of dealing on the basis of forged notes, then a *prima facie* case must be held to have been established.

On possession, the evidence which was attacked came mainly from witnesses whom the president correctly held to be accomplices. He expressed himself after warning himself duly of the dangers of so doing, as entirely willing to accept this evidence and convict on it. But this evidence was largely corroborated by the evidence of another inmate of the house to which the appellants had brought the forged notes, whom even the defence could not accuse of being an accomplice. There was therefore on the record independent corroboration of accomplices' evidence. The corroborated evidence also established dealing of the notes as merchandise and not as legal tender.

Other grounds of appeal were all minutiae, as for example, why had the police not recovered the paper wrapper in which the notes were brought. They are without substance.

The appeal is dismissed. The sentence is confirmed.

Appeal dismissed.

Solicitors: *Yeap & Co.; R. Rajasingam & Co.*

CHOO AH PAT v. CHOW YEE WAH & ANOR.

[O.C.J. (Abdul Hamid J.) November 26, 1973]
[Kuala Lumpur — Civil Suit No. 469 of 1971]

Personal Property — Joint account opened by deceased with first defendant for the benefit of his wife — Whether deceased was of sound mind at time cheque drawn up — Burden of proof — Presumption — Undue influence — Whether authority given by deceased revoked by his subsequent mental condition — Duty of banker — Rule of survivorship whether overriden by equity — Forgery — Fraud — Completely constituted trust — Contracts (Malay States) Ordinance, 1950, s. 16(1).

Evidence Act, 1950 (Act 56), s. 114(d) — Presumption in favour of continuance — Presumption of sanity — Burden of proof.

In this case the deceased had prior to his death drawn a cheque for $60,384.80 and paid it into a joint account which he opened in his name and that of the first defendant for the benefit of his wife. The action was brought by the administratrix of the estate of the deceased to claim recovery of the said sum on the ground *inter alia* —

(a) that the cheque was not the deceased's cheque;

(b) that it was obtained by exercising undue influence on the deceased when he was of unsound mind, memory and understanding;

(c) that the documents were obtained by fraud;